

in the schools from which they came. Something is wrong here. Maybe I misinterpreted or misunderstood what was being said on the phone. I hope I was.

But the scores of those kids who get out of the environment they are studying in should soar.

The last point I want to make is, if you have 2,000 vouchers to hand out to a pool of kids, where do you find the students to give them to? How do you make that determination? As far as I know, we still haven't bridged our differences here.

Senator LANDRIEU and I, along with others on both sides—but more Democrats and some Republicans—have contended that we ought to make every effort to ensure that those vouchers, whether it is 2,000 or however many we have, go to kids in schools that are failing. There is a question about whether we have enough failing schools in the District of Columbia in order to make sure that those vouchers are fully implemented and exercised and used.

I am at a loss as to what to say on that. If the schools in this District are half as bad as we have all heard, there are more than enough kids in schools that any of us would deem failing to use those 2,000 vouchers for, and argue for more. There are 15 public schools in the District of Columbia that are deemed to be failing by the standards that are currently being used. I think that is going to change as this District of Columbia test is developed and implemented in the next couple of years.

In my State, we have been making great progress academically for the last year or so. We have several times the number of failing schools as the District of Columbia has.

I know in talking with Senator LANDRIEU in the last week or so that the State of Louisiana has a whole lot more—just in New Orleans alone many times more than 15—failing schools. There are going to be plenty of kids in failing schools here a year or so from now when it is up and running, if it is ever up and running—more than enough kids in these failing schools.

I would suggest to our friends on the other side of the aisle and to the administration that we shouldn't get bogged down on this point. Let us just give the vouchers to kids in failing schools, be done with it, and move on.

The last piece that is troubling—and it was troubling to us before but even more so now—is when legislation comes to the Senate, whoever the President is, whether it is a former President, President Bush, President Clinton, the former President Bush, President Reagan, there is a statement of administration policy that comes with regard to the legislation. Senator LANDRIEU and I were trying to obtain from our Republican colleagues and from the administration an agreement that what emerges from conference would actually be the language and the principles that were laid out that we and our friends talked about a whole

lot last week. We are asking for assurances from the administration and our Republican colleagues that regardless of what we vote on or agree to on the Senate floor—and the whole package could be agreed to on the Senate floor, but when we go to conference with the House of Representatives, you just never know what is going to come out of the conference. We didn't want to be hoodwinked. We didn't want to enjoy a period of victory on the Senate floor only to find that what emerges from the conference of the House of Representatives is something that looks quite different.

Our concerns were underlined, maybe with an exclamation point at the end, when we saw the statement of administration policy.

I don't have it before me. Does Senator LANDRIEU happen to have a statement of administration policy?

Ms. LANDRIEU. Yes.

Mr. President, I do have a statement of administration policy. I appreciate my colleague raising that issue. I know we are scheduled for a vote at 5:30. We only have a few more minutes for this discussion.

But as my colleague from Delaware has stated, there is a statement of administration policy that basically focuses on the \$13 million voucher proposal. It does not mention charter schools. It does not mention additional funding for traditional public schools.

We subsequently received a letter from Secretary Paige after this document was presented indicating that his Department is in support of the three-sector approach. But the Senator from Delaware is correct. Until we have a more definitive statement from the administration and our Republican colleagues, even if we accept that language in this bill, there would be really no confirmation.

Mr. CARPER. Mr. President, I believe the Senator from Nevada wishes to say something before we vote at 5:30. I don't want to impede him.

Mr. DEWINE. Mr. President, I wonder if my colleague will yield for a question?

Mr. CARPER. Yes.

Mr. DEWINE. I was really asking my colleague if Secretary Paige's letter—and, of course, my colleague from Louisiana just referenced that letter—I wonder if my colleague would agree that the letter from the Secretary is a pretty definitive letter. The Secretary is the Secretary and does represent the administration. So it seems to me that it is, in fact, the administration's policy to support the three-pronged approach that we have been talking about here on the Senate floor.

Mr. CARPER. I am encouraged that the Secretary has promulgated a letter. I don't know to what extent it also bears an imprimatur of OMB and the senior folks in the White House. I am encouraged by the letter.

The point I am trying to make is that we are uneasy in the first place about entering into some kind of agree-

ment on the Senate floor, and then just seeing that dissipate in conference. In the administration's statement they don't even mention the \$13 million for public and charter schools, which just further exacerbates our uneasiness.

Let me yield, if I may, to the Senator from Nevada.

Mr. ENSIGN. Mr. President, how much time remains before the vote?

The PRESIDING OFFICER. One minute.

Mr. ENSIGN. Mr. President, I ask unanimous consent that I be able to speak for 4 or 5 minutes.

Ms. LANDRIEU. I have to object. I am going to have to object.

The PRESIDING OFFICER. Objection is heard.

Ms. LANDRIEU. Right after the vote, we can agree to time, if the Senator wishes.

Mr. ENSIGN. I ask my colleague, Mr. President, is there a reason 4 minutes is a big deal?

Ms. LANDRIEU. There is actually a reason. I am sorry. After the vote, we would be pleased to have the Senator speak.

Mr. ENSIGN. Mr. President, I will take the remaining time.

I make a couple of comments. We call this a voucher bill, a scholarship bill, Pell grants for kids, GI bill for some of the most disadvantaged students in the District of Columbia. What we are talking about is the children. Are we going to leave children behind in arguably one of the worst school districts in America or are we going to allow them to at least have a chance, a couple of thousand of them, to have a chance they otherwise would not have? Not only that, can we show something that works? The current system in Washington, DC is not working. At least give the kids and their parents a chance. Instead of putting the bureaucracy first, put the children first.

#### EXECUTIVE SESSION

#### NOMINATION OF CARLOS T. BEA, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the hour of 5:30 having arrived, the Senate will proceed to executive session to consider the following nomination which the clerk will report.

The legislative clerk read the nomination of Carlos T. Bea, of California, to be United States Circuit Judge for the Ninth Circuit.

The PRESIDING OFFICER. There are 2 minutes divided for debate on the nomination.

Mr. HATCH. Mr. President, I am pleased that we are considering the nomination of Judge Carlos Bea to serve on the U.S. Court of Appeals for the Ninth Circuit. He has had an exemplary legal career in California as a successful attorney and an impartial

jurist, and will serve with honor and distinction on the ninth circuit.

After a distinguished 32-year career in private practice, Judge Bea was appointed and subsequently elected to his current position as a judge on the San Francisco Superior Court in 1990. He was re-elected, without opposition, to the Superior Court bench in 1996 and 2002. In this capacity, he has handled literally thousands of cases and presided over hundreds of trials. In fact, his colleagues and attorneys who practice before him have commented publicly that Judge Bea is at his best when handling complex trials and difficult legal issues.

As with other nominees to the ninth circuit that this committee has considered this year, Judge Bea's colleagues overwhelmingly support his confirmation to the Federal appellate bench. Thirty-seven judges of the San Francisco Superior Court, who serve with Judge Bea and work with him every day, sent a letter to the committee praising his skills as a jurist, and recognizing his service on many of the Superior Court's management committees. He also serves, at the State level, on the California Judicial Council's Advisory Committee on Access and Fairness.

In addition to his Superior Court colleagues, California Supreme Court Justice Carlos Moreno, San Francisco Mayor Willie Brown, and representatives of the San Francisco Bay Area's Hispanic community all wrote to the Judiciary Committee, expressing enthusiastic support for Judge Bea's confirmation to the ninth circuit.

I join them in strong support for Judge Bea's confirmation and urge my colleagues to do likewise.

I yield the floor.

Mr. LEAHY. Mr. President, tonight the Senate votes on the nomination of Judge Carlos Bea of California to the ninth circuit. In just 9 months this year, the Senate has confirmed 58 of President Bush's judicial nominees, which is more than Republicans allowed to be confirmed for President Clinton in 4 of the 6 years of Republican control. In fact, in just 9 months this year, the Republican led Senate has confirmed the same number of judicial nominees as they allowed for President Clinton in all 12 months of 1995. I recall well that the following annual session, 1996, Republicans allowed only 17 judicial nominees to be confirmed all year and not a single circuit court nominee was allowed a confirmation vote by the Senate.

I am glad that, in moving the nomination of Judge Bea to the ninth circuit, the Republican leadership has chosen not to follow the delaying approach they took on the nominations of two other Latino circuit court nominees of President Bush, Judge Edward Prado to the fifth circuit and Judge Consuelo Callahan to the ninth circuit. The two Democratic home State Senators support the nomination of Judge Bea and have worked to expedite his

consideration. I expect most if not all Democratic Senators will vote to confirm him, just as they did Judge Prado and Judge Callahan and the scores of Hispanic nominees we have worked so hard to confirm over the last 11 years.

For 2 full years this White House refused to nominate any Latino for the circuit courts other than the highly divisive and controversial nomination of Miguel Estrada. Then the White House refused to work with the Senate to provide the information needed to consider that nomination. Ultimately Mr. Estrada asked that his nomination be withdrawn so that he could devote his attention to his law practice at a prestigious law firm. The Republican leadership delayed Senate consideration of Judge Edward Prado's nomination for a month, then delayed consideration of the nomination of Judge Consuelo Callahan. Their false claim of anti-Hispanic bias among Democrats has been rebutted by the facts.

Democrats have voted to confirm 13 Latinos nominated by President Bush to the Federal courts. Last Congress, Senate Democrats swiftly confirmed six Latino judicial nominees chosen by President Bush—Christina Armijo of New Mexico, Judge Phillip Martinez of Texas, Randy Crane of Texas, Judge Jose Martinez of Florida, Magistrate Judge Alia Ludlum of Texas, and Jose Linares of New Jersey. This Congress, Democrats have unanimously supported the confirmation of seven other Latino judicial nominees—Edward Prado of Texas to the fifth circuit, Consuelo Callahan of California to the ninth circuit, S. James Otero of California, Cecilia Altonaga of Florida, Xavier Rodriguez of Texas, and Frank Rodriguez Montalvo of Texas. And today we vote on the nomination of Judge Bea.

Democrats supported the appointment of 11 Latinos nominated by President Clinton to the appellate courts, but Republicans blocked 3 of them. Of the 12 Latino appellate judges currently seated in the Federal courts, 8 were appointed by President Clinton and 2 by President Bush.

Republicans blocked six Latino nominees of President Clinton from ever receiving a vote—three for the circuit courts and three for the district courts. Republicans blocked Enrique Moreno, who President Clinton nominated to the fifth circuit; Jorge Rangel, who President Clinton nominated to the fifth circuit; and Christine Arguello, who President Clinton nominated to the tenth circuit. In addition, Republicans refused to allow votes on district court nominees, Ricardo Morado, R. Samuel Paz, and Anabelle Rodriguez. Although Republicans denied confirmation votes for six Latinos nominated by President Clinton, among the more than 60 other judicial nominees, Democrats have opposed only a handful of President Bush's judicial nominees.

Many Hispanic nominees of President Clinton were also delayed by Repub-

licans including immigrants Judge Rosemary Barket and Judge Sonia Sotomayor, as well as Mexican-Americans Judge Richard Paez and Judge Hilda Tagle. Republicans filibustered Judge Paez's nomination for more than 4 full years before finally allowing him a confirmation vote.

Like many of President Clinton's Hispanic nominees, Judge Bea's nomination is supported by the Mexican American Legal Defense and Education Fund and others in the local community.

After today's vote, the Senate's tally is 158 to 3 with 158 lifetime judicial nominations confirmed and three of the most extreme having been blocked. This stands in stark contrast to the Republican record during their prior 6 years of control of the Senate, when Republicans allowed the confirmation of 248 of President Clinton's judicial nominees and blocked confirmation votes on 63 of his judicial nominees, 20 percent. The historical record shows that in 6 years of control, Republicans blocked votes on almost two dozen of President Clinton's circuit court nominees, including five nominees for the fourth Circuit, three for the fifth Circuit, three for the sixth Circuit, three for the ninth Circuit, two for the tenth Circuit and two for the D.C. Circuit. Indeed, in the third and fourth year's of President Clinton's second term, when they controlled the Senate majority and timetable, less than half of President Clinton's circuit nominees were confirmed. Despite this history, Democrats held the first hearings and votes in years for President Bush's nominees to the fourth, fifth, sixth, tenth and D.C. Circuits. Only a handful of the most extreme or controversial nominees of President Bush have been blocked from receiving votes.

Despite the recent past when Republicans blocked so many more circuit court nominees of President Clinton, they seem determined to use judicial nominations for their 2004 election strategy. As the Los Angeles Daily Journal reported last week:

Despite the fact that judicial nominations barely register on the public's radar screen, Republicans say the issue is a good one for them. They plan to continue to push hard for Bush's nominees, even in the face of firm Democratic opposition. And, they believe, the more nominees that Democrats block, the more the Republican charge of Democratic "obstructionism" will resonate with voters, ultimately paying dividends in the 2004 elections, especially in the South. "Our strategy has been: We don't want to see these people go down, but if they're going to go down, the Democrats have to hurt for it," said the [Republican] aide. Bush himself has said he intends to make his judicial nominees an issue in 2004. "I'm reminding people of the issue of judges," Bush said in a roundtable meeting with Texas reporters last week. "I will elevate this issue as the course of the campaign goes on."

For 5 of the 6 full years that Republicans controlled the Senate during the Clinton administration they did not allow 12 circuit court nominees to be confirmed all year. With Judge Bea's

confirmation, Democrats will have joined in the confirmation of far more circuit court nominees of this President than Republicans allowed on average for President Clinton. In the years 1995 through 2000 just seven circuit court nominees were allowed to be confirmed per year on average. This is the twelfth circuit judge confirmed in the last 9 months. This is in addition to the 17 circuit judges confirmed while I chaired the Judiciary Committee and Democrats made up the Senate majority in 2001 and 2002. That totals 29 circuit judges confirmed in the last 26 months.

Republicans do not want to discuss these facts and seem to hope that the American public is not closely watching the actual work of the Senate since 1995. Far from being obstructionist, Senate Democrats have been accommodating in confirming the vast majority of President Bush's judicial nominees, 150 so far. Despite the very real Republican obstruction of dozens and dozens of President Clinton's judicial nominees, we have turned the other cheek in voting for President Bush's very conservative nominees to seats kept open by Republican obstruction of President Clinton's nominees.

As a consequence, there are now fewer vacancies on the Federal courts today and earlier this year than at any time in the past 13 years. Had we not created new seats for this President to fill, we would be at the all-time low vacancies of the Reagan administration. There are more lifetime appointed Federal judges serving on the bench today than at any time in American history. This is hardly the portrait of obstructionism that Republicans will try to sell to the American people.

We have been fair but we will not be rubberstamps for this or any administration. The stakes are too high and the Constitution is too important to do otherwise.

Mrs. BOXER. Mr. President, I want to comment on the nomination currently pending before the Senate, Judge Carlos Bea for the Ninth Circuit Court of Appeals.

I was delighted to meet Judge Bea and his family at his Judiciary Committee hearing earlier this month.

Judge Bea was born in Spain but has lived in California for most of his life. He received both his undergraduate and law degrees from Stanford University. He practiced law in the San Francisco area for over 30 years before he was appointed a judge on the San Francisco Superior Court. He was elected to the seat in 1990 and has been reelected twice by the voters of San Francisco. He has also taught at Stanford and Hastings law schools.

In addition to his accomplishments in the legal community, Judge Bea is also an Olympic athlete. He played on the Cuban national basketball team during the 1952 Olympic games.

As a judge, he is widely respected for his keen intelligence. As one reporter noted, "he has received high marks for

his specialty, handling complex civil litigation disputes."

I intend to support this nomination.

The PRESIDING OFFICER. If all time is yielded back, the question is on the nomination.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The PRESIDING OFFICER (Mr. TALENT). The question is, Will the Senate advise and consent to the nomination of Carlos T. Bea, of California, to be United States Circuit Judge for the Ninth Circuit.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. ROBERTS) and the Senator from Rhode Island (Mr. CHAFEE) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), the Senator from Illinois (Mr. DURBIN), the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Vermont (Mr. JEFFORDS), the Senator from Massachusetts (Mr. KERRY), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Arkansas (Mrs. LINCOLN), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

I also announce that the Senator from Rhode Island (Mr. REED) is absent attending a funeral.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) and the Senator from New Jersey (Mr. LAUTENBERG) would each vote "yea."

The PRESIDING OFFICER (Ms. MURKOWSKI). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 86, nays 0, as follows:

[Rollcall Vote No. 368 Ex.]

YEAS—86

Akaka	DeWine	Lugar
Alexander	Dodd	McCain
Allard	Dole	McConnell
Allen	Domenici	Mikulski
Baucus	Dorgan	Miller
Bayh	Ensign	Murkowski
Bennett	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (SC)	Reid
Bunning	Grassley	Rockefeller
Burns	Gregg	Santorum
Byrd	Hagel	Sarbanes
Campbell	Harkin	Schumer
Cantwell	Hatch	Sessions
Carper	Hollings	Shelby
Chambliss	Hutchinson	Smith
Clinton	Inhofe	Snowe
Cochran	Inouye	Specter
Coleman	Johnson	Stabenow
Collins	Kennedy	Stevens
Conrad	Kohl	Sununu
Cornyn	Kyl	Talent
Craig	Landrieu	Thomas
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lott	

NOT VOTING—14

Biden	Graham (FL)	Lincoln
Chafee	Jeffords	Reed
Corzine	Kerry	Roberts
Durbin	Lautenberg	Wyden
Edwards	Lieberman	

The nomination was confirmed.

The PRESIDING OFFICER. The President will be notified of the Senate's action.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

#### MORNING BUSINESS

Mr. FRIST. Madam President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DAYTON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SEXUAL MISCONDUCT ALLEGATIONS AT THE AIR FORCE ACADEMY

Mr. DAYTON. Madam President, last week, in a hearing of the Senate Armed Services Committee, I listened to some of the most disturbing testimony I have heard in my entire almost 3 years now in the Senate. Testifying were members of a congressional panel investigating the sexual harassment charges raised at the U.S. Air Force Academy. The hearing, which is the third one this year on this matter, is a great credit to its chairman, Senator WARNER. There is no one in this body for whom I have greater respect than the senior Senator from Virginia, now in his 25th year of outstanding service to the State of Virginia and to our Nation. He and his colleague of 25 years, Senator LEVIN of Michigan, don't always agree, but they always work cordially and constructively together to lead that committee and establish a bipartisan or nonpartisan relations way.

As former Secretary of the Navy, the chairman, who strongly supports the services, clearly does not relish in this kind of critical review of one of the Academies. He does not evade it either. To the contrary, he faced up to it responsibly and resolutely, which led to the hearing last week and to another one scheduled for tomorrow. Last week's testimony was provided on behalf of the congressional panel established by the Congress to investigate sexual misconduct allegations at the Air Force Academy. It was eloquently